IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE GODA RAGHURAM**

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**WRIT PETITION NO : 4105 of 1999**

Between:

Madipalli Raju S/o. Late Rajaratnam
R/o. 45-1-63, Padavalarevu
Vijayawada Krishna Dist.

..... PETITIONER

**AND**

1 The Depot Manager
The Depot Manager Vijayawada-I, Depot,
A.P.S.R.T.C. Vijayawada, Krishna Dist.,
2 The Chief Inspector(Enquiries)
The Chief Inspector(Enquiries) Regional Manager's Office
A.P.S.R.T.C. Vijayawada, Krishna Dist.,
3 The Regional Manager
The Regional Manager A.P.S.R.T.C. Vijayawada Region,
Vijayawada Krishna Dist.,

.....RESPONDENTS

**ORDER:**

By the proceedings of the first respondent, dated 27.02.1998, the petitioner was inflicted with a penalty of reduction of two incremental stages in the basic pay for a period of two years with effect on future increments besides treating the period of suspension from 03.07.1996 till reinstatement, as not on duty. The unsuccessful petitioner preferred an appeal, which was rejected by the third respondent by the order, dated 22.11.1998, aggrieved whereby the writ petition is filed.

The petitioner is a driver in the employment of the A.P.S.R.T.C. On 05.06.1996, the bus, which he was driving, was involved in an accident, as a consequence of which the death occured of a pedestrian of Sher Mohammedpet Village. The petitioner was prosecuted under Section 304-A of the Indian Penal Code (for short IPC). By the Judgment dated 21.07.1997 of the Judicial Magistrate of the

First Class, Jaggaiahpet in C.C.No.145 of 1996. The petitioner was acquitted of the charge under Section 304-A of the IPC. The disciplinary proceedings were initiated even during the pendency of the prosecution, but the petitioner filed a writ petition challenging the processing of the departmental enquiry during the pendency of the Criminal proceedings. This Court in W.P.No.15181 of 1996 by the order dated 01.08.1997 disposed of the said writ petition at the stage of admission directing the respondents-APSRTC not to proceed with the disciplinary enquiry till the conclusion of the petitioner's prosecution. The departmental enquiry was therefore, re-initiated after the conclusion of C.C.No.145 of 1996 whereat after a due process of enquiry, the petitioner was visited with the penalty of reduction by two stages in the basic pay with effect on future pay plus treatment of period of the suspension as not on duty.

Sri J.M.Naidu, learned counsel for the petitioner would contend that while issuing the second show cause notice, the report of the enquiry officer was not furnished to him. This is not complained either in the appeal before the third respondent or in the writ petition.

It is well settled that violation of the principles of natural justice *per se* would not invite invalidation of an order in a disciplinary proceedings unless the petitioner claiming said violation is able to demonstrate the prejudice occasioned on account of the violation *vide* **MAMAGING DIRECTOR, ECIL, HYDERABAD ETC. ETC. v B.KARUNAKARAN, ETC., ETC..** In the case on hand, the petitioner never complained about the non-communication of the

enquiry report along with the second show cause notice, either before the appellate authority or in the writ petition. Therefore, it cannot be inferred that he suffered a prejudice on account of such non-supply. In fact he submitted an explanation to the second show cause notice and also preferred an appeal on merits to the third respondent.

Another contention urged by the learned counsel for the petitioner is that the appellate authority had referred to the preliminary enquiry report and the statement in the preliminary enquiry report of an eye witness to the effect that the petitioner-driver applied breaks on seeing the pedestrian, but nevertheless hit the pedestrian resulting in his death, on the spot. The contention in this behalf is that the preliminary enquiry report was not furnished to him and he was provided no opportunity to cross-examine the preliminary enquiry officer or the witness. This contention also does not merit acceptance. It is not the pleading in the writ petition nor was there any objection in this behalf, in the petitioner's explanation to the second show cause notice that some material in the preliminary enquiry report was considered at the regular enquiry without notice or opportunity.

The residual contention is that in view of his acquittal in the criminal case, he cannot be arraigned for mis-conduct in a domestic enquiry, on an identical evidentiary profile. This contention does commend acceptance by this Court. In **KRISHAKALI TEA ESTATE v AKHIL BHARATIYA CHAH MAZDOOR SANGH AND ANOTHER**. It was held by the Supreme Court after considering the earlier judgment in **CAPT. M.PAUL ANTHONY v BHARAT**

**GOLD MINES LTD.,** that the object of criminal proceedings and disciplinary proceedings are distinct and different, and therefore, there can be no abhorrence to the conduct disciplinary proceedings after acquittal on similar conduct.

On the above analysis this Court finds no infirmity in the orders impugned in the writ petition. There are no merits. The writ petition is dismissed. No costs.

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15-09-2005

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